

Time *to* Care OREGON

HB 2005 Brief: Paid Family & Medical Leave

Overview:

Whether it's the birth of a child, the serious illness of a spouse, or the end-of-life for a parent -- we all need time to care for our families. Caring for a family is important work, and shouldn't mean losing wages or compromising our economic security. Our workplace and public policies have not kept pace with the growing number of families with all available adults in the workforce.

The United States is one of only a few nations in the world that does not provide paid maternity leave to working mothers, and one of only a handful of economically advanced nations that does not guarantee the right to paid leave for fathers or workers who provide care for seriously ill family members. Seven states and Washington, D.C. have already passed or established some form of paid parental or family leave: Washington, California, Connecticut, New Jersey, Rhode Island, Massachusetts and New York. In California and New Jersey, two states with long-standing paid family and medical leave programs, the cost has been minimal — less than 1% of wages. Washington is in the process of implementing their program now.

The overwhelming majority of Oregon voters, regardless of age, party, region, or parental status, support a comprehensive paid family and medical leave policy that covers *all* workers, whether they're full-time, part-time, high wage, or minimum wage.

Who is Covered:

HB 2005 creates a paid family and medical leave insurance program that ensures every working Oregonian will have paid time away from work to welcome a new child, to recover from a serious illness, to care for a loved one recovering from a serious illness or to deal with issues related to domestic violence, harassment, sexual assault or stalking. Coverage will be provided to *all* employees, regardless of employer size, industry or sector, and for part-time workers.

All workers will be able to take up to 12 weeks of paid leave and birth parents will be able to take an additional two weeks of paid leave for any pregnancy or childbirth-related condition. Workers who utilize paid family and medical leave benefits, and who would otherwise qualify for Oregon Family and Medical Leave (OFLA), will also qualify for up to an additional four weeks of unpaid leave for any covered purpose.

This bill also includes a definition of family member that better captures the nature of today's family structures and relationships. It will include:

- An individual who is the spouse or domestic partner of the employee;
- An individual who is the child of the employee;
- An individual who is a sibling or step-sibling of the employee
- An individual who is the grandchild or grandparent of the employee; or
- An individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship. This "blood or affinity" standard has been used by the federal government, the nation's largest employer with more than two million employees, for more than 45 years, and it has been expanded repeatedly¹. Since the overwhelming majority of Oregon's families exist outside of a "nuclear family" model of a married couple and their biological children, inclusive family definitions provide important support to all.

All employees working in Oregon will be covered by paid family and medical leave as long as they have earned at least \$1,000 in wages in the look-back base year. Oregonians who are self-employed and tribal governments will be able to opt in to the insurance fund for periods of at least three years.

Voluntary plans will be allowed for employers who wish to operate their own paid family and medical leave programs. The employee benefits of a voluntary plan must meet or exceed the state plan benefits. Benefits must also be extended to all employees of the business.

How it works:

This program will be managed by the Oregon Employment Department (OED). The total maximum amount of payroll assessed for this program will be statutorily capped at no more than 1% of employee wages, though the agency will have the authority to adjust that rate lower as long as the fund remains solvent and adequate reserves are maintained. For businesses with more than 25 employees, employees will contribute 60% of the overall contribution rate and employers will contribute 40% of the contribution rate through a regular payroll deduction, collected by the Oregon Department of Revenue. Payroll deductions will only be assessed on the 2019 Social Security wage base, which is \$132,900 of annual wages for each employee. Businesses with 25 or fewer employees are not required to contribute the employer share of the premium, however they are required to collect and remit the employee portion of the premium and abide by all reporting requirements.

A small employer (with 25 or fewer employees) can choose to pay the employer portion of the premium and, if they do, have access to state small business assistance grants to help cover the costs of hiring temporary employees when an employee is on leave. These assistance grants will also help small businesses cover costs incurred when their employees take leave by giving access to critical funds.

When an employee has a qualifying reason for leave they may submit a claim to OED and receive full or partial wage replacement for their time away from work directly from the state insurance fund, much like workers filing unemployment insurance claims. OED will verify individual employee eligibility with

¹ This language has been used in the context of funeral leave since 1969, for voluntary leave transfers since 1989, and for sick leave generally since 1994.

appropriate verification and will determine the benefit amount. This process removes the administrative burden of determining eligibility and length of leave from individual employers and provides an operating structure based on other existing public insurance programs that work well.

The program also allows for non-consecutive leave for those with caregiving responsibilities or ongoing regular medical care needs for a serious health condition. Paid leave in these instances will be available in full-day increments. For example, it will be allowable for a person with an aging parent who needs full-time care to only provide care two days per week to balance care being provided by another family member on other days.

Employees are required to provide at least 30 days notice to an employer when an employee has a foreseeable need of paid leave benefits. If the need for leave is not foreseeable, such as an unexpected injury/accident, notice should be given within 24 hours of commencing leave, and written notice may be required within three days of commencing leave.

The program will draw on Oregon Employment Department data on individual wages and income to determine benefits. The insurance benefit will pay an amount based on an individual's own earnings and Oregon's Average Weekly Wage (AWW), which is \$976 per week for 2019. Low wage workers, employees earning less than 65% of AWW (about \$634 per week in 2019), will receive 100% wage replacement. Individuals earning more than 65% of AWW will receive 65% of AWW plus 50% of their remaining wages above 65% AWW up to the benefit cap. The weekly benefit will be capped at 120% of AWW (\$1,171.20/week in 2019). An individual's own earnings will be calculated in the same way that OED currently calculates wages for unemployment insurance benefits. This wage replacement formula ensures that every worker, including minimum wage and low-income workers, are able to access this program.

A few examples of how the wage replacement formula would work at various income levels:

Hourly wage	Weekly wage (at 40 hours/week)	Annual wage (@ 52 weeks/year)	Max. Weekly Employer contribution (@ 0.04% of payroll)	Max. Weekly Employee contribution (@ 0.6% of payroll)	Max. Annual Employer contribution	Max Annual Employee contribution	Weekly benefit amount	Benefit % of regular wages
\$11.50	\$460.00	\$23,920.00	\$1.84	\$2.76	\$95.68	\$143.52	\$460.00	100.00%
\$15.00	\$600.00	\$31,200.00	\$2.40	\$3.60	\$124.80	\$187.20	\$600.00	100.00%
\$20.00	\$800.00	\$41,600.00	\$3.20	\$4.80	\$166.40	\$249.60	\$717	89.68%
\$25.00	\$1,000.00	\$52,000.00	\$4.00	\$6.00	\$208.00	\$312.00	\$817	81.74%
\$30.00	\$1,200.00	\$62,400.00	\$4.80	\$7.20	\$249.60	\$374.40	\$917	76.45%
\$35.00	\$1,400.00	\$72,800.00	\$5.60	\$8.40	\$291.20	\$436.80	\$1,017	72.67%
\$40.00	\$1,600.00	\$83,200.00	\$6.40	\$9.60	\$332.80	\$499.20	\$1,117	69.84%
\$45.00	\$1,800.00	\$93,600.00	\$7.20	\$10.80	\$374.40	\$561.60	\$1,171	65.06%
\$50.00	\$2,000.00	\$104,000.00	\$8.00	\$12.00	\$416.00	\$624.00	\$1,171	58.55%
\$55.00	\$2,200.00	\$114,400.00	\$8.80	\$13.20	\$457.60	\$686.40	\$1,171	53.23%
\$60.00	\$2,400.00	\$124,800.00	\$9.60	\$14.40	\$499.20	\$748.80	\$1,171	48.79%
\$65.00	\$2,600.00	\$135,200.00	\$10	\$15	\$540.80	\$797	\$1,171	45.04%
\$70.00	\$2,800.00	\$145,600.00	\$10	\$15	\$582.40	\$797	\$1,171	41.82%

*Based on a 2019 AWW of \$976

Appeals of coverage determinations, payroll reporting and withholdings will be handled by the Oregon Office of Administrative Hearings. Either an employer or an employee may appeal a decision made by the administering agency.

Employment Protections:

HB 2005 offers basic employment protections so that no one is fired or retaliated against when they welcome a new child to their home or attend to their own or a family member's serious health condition. Employees will also have the right to return to their previous position after a period of paid leave, with some variance depending on the employer's size: Employers with more than 25 employees will be required to return an employee to their previous position when they return from leave or, if the position no longer exists, to an equivalent position. Employers with fewer than 25 employees will be required to return the employee to a similar position, provided it has the same employment benefits and pay. All employees, regardless of employer size, will retain access to employer-provided health care benefits (including any required employee contribution) through the duration of their leave.

Employment protections will be enforced by the Oregon Bureau of Labor and Industries and available to workers after 90 days of employment with a new employer. The paid insurance benefit does not require this 90-day waiting period, only earning at least \$1,000 in the look-back base year.

Timeline for Implementation:

Agencies will begin preparations to administer the fund almost immediately after passage, but will not be able to collect the payroll assessment until January 1, 2022. This will give them time to complete rulemaking and prepare to successfully administer the program.

These contributions will be collected for one year before the program will begin providing benefits on January 1, 2023.

It's time for Oregon to have paid family and medical leave:

At some point, almost every Oregonian will need to take time away from work to deal with a family or medical issue, whether it's to welcome a new child, aid a loved one with a serious illness or injury, or to get care for themselves. These events happen to all of us, but only 15% of American workers have access to paid family and medical leave through their employer, and fewer than 40% have access to medical leave through job-provided, short-term disability insurance.

By passing House Bill 2005, we are leveling the playing field so that all Oregon workers can care for their families without risking their economic security.